IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

O R D E R

Sidh Raj. **VS**. Municipal Council,Jodhpur & another.

S.B. CIVIL WRIT PETITION NO.1046/1992
under Article 226 of the
Constitution of India.

Date of order : 11th Dec., 2004

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA

Mr. M. Mridul Senior Advocate assisted by
Mr. R.N. Upadhyay for the petitioner.
Mr. Vinayak Joshi for the respondents.

BY THE COURT:-

This petition was filed on 19th Feb., 1992 seeking the relief that the respondents be directed not to retire the petitioner on the basis of undecided date of birth, i.e. 22.2.1934, on 29.2.1992 till the issue of correct date of birth is finally decided and thus, the order dated 11.9.1991 (Annex.2) may be quashed.

The petition has arisen in the following circumstances:-

The petitioner, who is middle pass has joined services of respondent Jodhpur Municipal Council in the year 1954. Vide order dated 11.9.1991 (Annex.2) the petitioner was informed that he shall be retiring in the afternoon of 22.2.1992. After giving a notice for demand of justice, the present petition was filed inter alia on the ground that date of birth of the petitioner was not decided which was contentious issue between the petitioner and his employer. According to the petitioner, his date of birth was 22nd Feb., 1936 and it was duly entered in his service book. The respondents have given a letter to the petitioner on 4.2.1992 on being pointed out by the audit party that there was interpolation in the figure '6' and the word '4' appears to have been altered to '6' later on. This led to issuance of notice to the petitioner on 4.2.1992 calling upon the petitioner to explain the discrepancy and place before the respondents the relevant material about the correct date of birth so that correct date of birth may be entered in his service book.

It is on the basis of aforesaid facts that the respondents have sought explanation from the

petitioner why he cannot be prematurely retired on 29th Feb., 1992, the month in which he completed 58 years by taking the birth as 22nd Feb., 1934.

While issuing notice, an interim order was passed on 21.2.1992 staying the retirement on 29th Feb., 1992. While the original ad interim ex-parte order appears to have been de-linked from the file and is not available, however, the fact that interim order was in operation has to be taken to be correct in view of the fact that in the file of the first stay application No.939/1992, the order sheet prior to 16.5.1992 are not available but the order dated 19.5.1992 shows that the Court has dealt with an application under Article 226(3) moved by the respondent for vacating the ex-parte interim order passed by this Court in which the fact of grant of stay order has been stated and mentioned and the learned Single Judge while granting time to the respondents to file rejoinder, has extended the interim order until the next date of hearing which has ultimately continued upto 9.9.1993. It appears from the order passed by respondents and filed along with the second stay petition No.4324/93 in which it has been stated that the petitioner was granted interim order on 21.2.1992 against the order superannuating the petitioner dated 19.5.1991, and since as on the

date of order dt.9.9.1993, interim order was not effective, the petitioner was retired immediately. This had led to filing of the second stay petition for staying the operation of order dt.9.9.1993. This appears to be the result of the fact that interim order passed in the first stay petition was extended from time to time until next date of hearing, and on one of the hearing, the interim order was not extended. Be that as it may, there is no doubt that the applicant has actually served upto 9.9.1993. The second stay application was rejected on 26.8.1996.

The respondents in their reply have placed on record the notices issued to the petitioner from time to time dated 4.9.1981, 13.5.1982, 16.8.1992, 18.2.1983, 16.5.1983, 29.7.1983, 7.7.1984, 1.6.1988, 30.8.1988 and 13.9.1988 calling upon the petitioner to produce the certificate of his educational qualification. From the letters dated 1.6.1988 it was clearly stated that if the cogent material was not placed before the authorities then his date of birth shall be taken to be 22.2.1934. The petitioner in his reply and rejoinder has referred to correspondence until 1984 and rested his case on horoscope but avoided to place on record the original or any certificate from the institution where he had studied on the ground that he does not have with him the

original or its copy. It may be noticed that no attempt was made by the petitioner to place on record the contemporaneous material about the date of birth disclosed to school authorities which would have found place in school register. The fact that petitioner does not have with him copy or original of certificates issued by the school where he had studied does not detract from the fact that the petitioner knew the institution where he had studied and he could have obtained or at least attempted to obtain such information from institution authorities. But, he did not make any such attempt, and relied on production of copy of Horoscope, which too can be prepared subsequently.

It is in the aforesaid circumstances, I am of the opinion that having given enough opportunity to the petitioner, he has failed to establish that his date of birth was 22nd Feb., 1936 and not 22.2.34 , which appears to have been written in service book but subsequently altered to 36 and consequently it cannot be said that treating the petitioner to have been born on 22nd Feb., 1934 and requiring him to superannuate on completion of 58 years in February 1992 was in any way erroneous or arbitrary.

In view thereof, the impugned order dated

11.9.1991 (Annex.2) does not call for interference and the writ petition deserves to be dismissed.

However, it may further be noticed that it is admitted case of the respondents that the petitioner was actually discharging his functions upto 9.9.1993. He ought to be paid the remuneration for the work he has discharged since 29.2.1992 as it was being paid to him earlier. The petitioner's contention that he has not been paid his remuneration from the proposed date of superannuation i.e. 29.2.1992 until the date of actual superannuation i.e. 19.9.1993 is not in dispute. In view thereof, the respondents are directed to make the payment of remuneration for the period from the date of retirement i.e. 29.2.1992 until 19.9.1993 for the work actually done without effecting the determination of his retiral benefits.

The payment of period during which the petitioner has worked after attaining the age of superannuation on 29th Feb., 1992, if not already made, shall be made within a period of two months.

There shall be no order as to costs.

[RAJESH BALIA], J.

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